ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 17, 2004

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2004-7959

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209466.

The Baytown Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim.

We note that section 552.301(e) of the Government Code provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, a copy of the specific information requested or representative samples of it, labeled to indicate which exceptions to disclosure apply to which parts of the documents. *See id.* § 552.301(e). To date, however, the department has failed to provide us with a copy of the specific information requested or representative samples of the information. Accordingly, we conclude that the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from us.

Because the department failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The department must demonstrate a compelling interest

in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the department claims that the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code, we note that the department has not demonstrated a compelling interest under this exception to disclosure in this instance that would allow any portion of the requested information to be withheld from disclosure. *See* Open Records Decision No.177(1977) (governmental body may waive statutory predecessor to section 552.108); *but see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108 in certain circumstances). Accordingly, we conclude that the department may not withhold any portion of the requested information under section 552.108 of the Government Code. Furthermore, although the department also claims that portions of the requested information are excepted from disclosure pursuant to section 552.130 of the Government Code, we have no basis for concluding that any such portion is so excepted because the department failed to submit the requested information to us for our review. Accordingly, we also conclude that the department may not withhold any portion of the requested information under section 552.130 of the Government Code. Consequently, the department must release the requested information to the requestor.

However, we caution the department that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the requested information, the department should ensure that it does not contain any such confidential information. If the department believes that any portion of the requested information is indeed confidential and may not lawfully be released, it must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

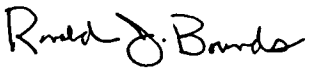
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 209466

c: Ms. Debra Chantel Dumesnil
1704 Mississippi
Baytown, Texas 77520
(w/o enclosures)